

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LYNCH MARKS, LLC,	)	
	)	
Plaintiff(s),	)	No. C 05-5178 BZ
	)	
v.	)	<b>ORDER SCHEDULING</b>
	)	<b>JURY TRIAL AND</b>
VERMONSTER, LLC,	)	<b>PRETRIAL MATTERS</b>
	)	
Defendant(s).	)	
	)	
<hr/> VERMONSTER, LLC,	)	
	)	
Counter-Complainant(s),	)	
	)	
v.	)	
	)	
LYNCH MARKS, LLC,	)	
	)	
Counter-Defendant(s).	)	
<hr/>	)	

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. DATES

Trial Date: Monday, 2/5/2007, at 8:30 a.m.

Pretrial Conference: Tuesday, 1/16/2007, at 4:00 p.m.

1 Last Day to Hear Dispositive Motions: Wednesday, 11/29/2006

2 Last Day for Expert Discovery: Friday, 10/20/2006

3 Last Day for Expert Disclosure: Friday, 10/13/2006

4 Close of Non-expert Discovery: Friday, 10/6/2006

5 2. DISCLOSURE AND DISCOVERY

6 The parties are reminded that a failure to voluntarily  
7 disclose information pursuant to Federal Rule of Civil  
8 Procedure 26(a) or to supplement disclosures or discovery  
9 responses pursuant to Rule 26(e) may result in exclusionary  
10 sanctions. Thirty days prior to the close of non-expert  
11 discovery, lead counsel for each party shall serve and file a  
12 certification that all supplementation has been completed.

13 In the event a discovery dispute arises, **lead counsel** for  
14 each party shall meet in person or, if counsel are outside the  
15 Bay Area, by telephone and make a good faith effort to resolve  
16 their dispute. Exchanging letters or telephone messages about  
17 the dispute is insufficient. The Court does not read  
18 subsequent positioning letters; parties shall instead make a  
19 contemporaneous record of their meeting using a tape recorder  
20 or a court reporter.

21 In the event they cannot resolve their dispute, the  
22 parties must participate in a telephone conference with the  
23 Court **before** filing any discovery motions or other papers.  
24 The party seeking discovery shall request a conference in a  
25 letter served on all parties not exceeding two pages (with no  
26 attachments) which briefly explains the nature of the action  
27 and the issues in dispute. Other parties shall reply in  
28 similar fashion within two days of receiving the letter

1 requesting the conference. The Court will contact the parties  
2 to schedule the conference.

3 3. MOTIONS

4 Consult Civil Local Rules 7-1 through 7-5 and this  
5 Court's standing orders regarding motion practice. Motions  
6 for **summary judgment** shall be accompanied by a statement of  
7 the material facts not in dispute supported by citations to  
8 admissible evidence. The parties shall file a joint statement  
9 of undisputed facts where possible. If the parties are unable  
10 to reach complete agreement after meeting and conferring, they  
11 shall file a joint statement of the undisputed facts about  
12 which they do agree. Any party may then file a separate  
13 statement of the additional facts that the party contends are  
14 undisputed. A party who without substantial justification  
15 contends that a fact is in dispute is subject to sanctions. A  
16 Chambers copy of all briefs shall be submitted on a diskette  
17 formatted in WordPerfect 6.1, 8, 9 or 10 (Windows) or  
18 WordPerfect 5.1 (DOS).

19 4. MEDIATION

20 By agreement of the parties, this matter has been  
21 referred for a Mediation to be conducted by the end of June  
22 2006, if possible. The parties shall promptly notify the  
23 Court whether the case is resolved at the Mediation.

24 5. SETTLEMENT

25 This case has been referred for assignment to a  
26 Magistrate Judge to conduct a settlement conference in October  
27 or November 2006 in the event the case is not resolved at the  
28 Mediation. Counsel will be contacted by that judge's chambers

1 with a date and time for the conference.

2 6. PRETRIAL CONFERENCE

3 Not less than thirty days prior to the date of the  
4 pretrial conference, the parties shall meet and take all steps  
5 necessary to fulfill the requirements of this Order.

6 Not less than twenty days prior to the pretrial  
7 conference, the parties shall: (1) serve and file a joint  
8 pretrial statement, containing the information listed in  
9 **Attachment 1**, and a proposed pretrial order; (2) serve and  
10 file trial briefs, motions in limine and statements  
11 designating excerpts from discovery that will be offered at  
12 trial (specifying the witness and page and line references);  
13 (3) exchange exhibits, agree on and number a joint set of  
14 exhibits and number separately those exhibits to which the  
15 parties cannot agree; (4) deliver all marked trial exhibits  
16 directly to the courtroom clerk, Ms. Scott; (5) deliver one  
17 extra set of all marked exhibits directly to Chambers; and (6)  
18 submit all exhibits in three-ring binders. Each exhibit shall  
19 be marked with an exhibit label as contained in **Attachment 2**.  
20 The exhibits shall also be separated with correctly marked  
21 side tabs so that they are easy to find.

22 No party shall be permitted to call any witness or offer  
23 any exhibit in its case in chief that is not disclosed at  
24 pretrial, without leave of Court and for good cause.

25 Lead trial counsel for each party shall meet and confer  
26 in an effort to resolve all disputes regarding anticipated  
27 testimony, witnesses and exhibits. All motions in limine and  
28 objections to witnesses or exhibits will be heard at the

1 pretrial conference. Not less than ten days prior to the  
2 pretrial conference, the parties shall serve and file any  
3 objections to witnesses or exhibits or to the qualifications  
4 of an expert witness. Motions in limine shall be filed and  
5 served not less than twenty days prior to the conference.  
6 Oppositions shall be filed and served not less than ten days  
7 prior to the conference. There shall be no replies.

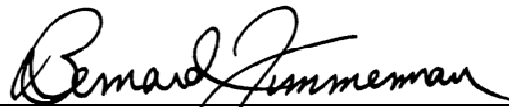
8 Not less than twenty days prior to the pretrial  
9 conference the parties shall serve and file requested voir  
10 dire questions, jury instructions, and forms of verdict. The  
11 following jury instructions from the *Manual of Model Civil*  
12 *Jury Instructions for the Ninth Circuit* (1997 ed.) will be  
13 given absent objection: 1.1-1.12, 2.1-2.2, 3.1-3.3, 3.5-3.8,  
14 4.1-4.3. Do not submit a copy of these instructions. Counsel  
15 shall submit a joint set of case specific instructions. Any  
16 instructions on which the parties cannot agree may be  
17 submitted separately. The Ninth Circuit Manual should be used  
18 where possible. Each requested instruction shall be typed in  
19 full on a separate page with citations to the authority upon  
20 which it is based. Proposed jury instructions taken from the  
21 Ninth Circuit Manual need only contain a citation to that  
22 source. Any modifications made to proposed instructions taken  
23 from a manual of model instructions must be clearly indicated.  
24 In addition, all proposed jury instructions should conform to  
25 the format of the Example Jury Instruction attached to this  
26 Order. Not less than ten days prior to the pretrial  
27 conference, the parties shall serve and file any objections to  
28 separately proposed jury instructions.

1 Jury instructions that the Court has given in prior cases  
2 may be downloaded from the Northern District website at  
3 **http:\\www.cand.uscourts.gov**. (Instructions are located on  
4 the "Judge Information" page for Magistrate Judge Zimmerman.)  
5 The Court will generally give the same instructions in cases  
6 involving similar claims unless a party establishes, with  
7 supporting authorities, that the instruction is no longer  
8 correct or that a different instruction should be given.  
9 Judicial Council (CACI) instructions generally will be given  
10 instead of BAJI instructions.

11 All proposed jury instructions, motions in limine, forms  
12 of verdict and trial briefs shall be accompanied by a floppy  
13 diskette containing a copy of the document formatted in  
14 WordPerfect 6.1, 8, 9 or 10 (Windows) or WordPerfect 5.1  
15 (DOS).

16 At the time of filing the original with the Clerk's  
17 Office, two copies of all documents (but only one copy of the  
18 exhibits) shall be delivered directly to Chambers (Room 15-  
19 6688). Chambers' copies of all pretrial documents shall be  
20 three-hole punched at the side, suitable for insertion into  
21 standard, three-ring binders.

22 Dated: May 2, 2006

23 

24 Bernard Zimmerman  
25 United States Magistrate Judge

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**EXAMPLE PROPOSED JURY INSTRUCTION**  
**For Chambers of Magistrate Judge Zimmerman**

A proposed jury instruction should contain the following elements in the following order: (1) the name of the party submitting the instruction; (2) the title of the instruction; (3) the text of the instruction; (4) the authority for the instruction; (5) blank boxes for the Court to note whether it gives the instruction, refuses to give it, or gives it as modified. The following proposed instruction contains these elements.

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\_\_\_\_\_'s Proposed Instruction No. \_\_\_\_\_.  
(Party)

[Title]

[Text]

[Authority]

\_\_\_\_\_ GIVEN      \_\_\_\_\_ REFUSED      \_\_\_\_\_ GIVEN AS MODIFIED

**ATTACHMENT 1**

The parties shall file a joint pretrial conference statement containing the following information:

**(1) The Action.**

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

**(2) The Factual Basis of the Action.**

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

**(3) Trial Preparation.**

A brief description of the efforts the parties have made to resolve disputes over anticipated testimony, exhibits and witnesses.



1 (A) Witnesses to be Called. In lieu  
2 of FRCP 26(a)(3)(A), a list of  
3 all witnesses likely to be  
4 called at trial, other than  
5 solely for impeachment or  
6 rebuttal, together with a brief  
7 statement following each name  
8 describing the substance of the  
9 testimony to be given.

6 (B) Estimate of Trial Time. An  
7 estimate of the number of court  
8 days needed for the presentation  
9 of each party's case, indicating  
10 possible reductions in time  
11 through proposed stipulations,  
12 agreed statements of facts, or  
13 expedited means of presenting  
14 testimony and exhibits.

11 (C) Use of Discovery Responses. In  
12 lieu of FRCP 26(a)(3)(B), cite  
13 possible presentation at trial  
14 of evidence, other than solely  
15 for impeachment or rebuttal,  
16 through use of excerpts from  
17 depositions, from interrogatory  
18 answers, or from responses to  
19 requests for admission. Counsel  
20 shall state any objections to  
21 use of these materials and that  
22 counsel has conferred respecting  
23 such objections.

18 (D) Further Discovery or Motions. A  
19 statement of all remaining  
20 motions, including motions in  
21 limine.

21 **(4) Trial Alternatives and Options.**

22 (A) Settlement Discussion. A  
23 statement summarizing the status  
24 of settlement negotiations and  
25 indicating whether further  
26 negotiations are likely to be  
27 productive.

25 (B) Amendments, Dismissals. A  
26 statement of requested or  
27 proposed amendments to pleadings  
28 or dismissals of parties, claims  
or defenses.

28 (C) Bifurcation, Separate Trial of

1 Issues. A statement of whether  
2 bifurcation or a separate trial  
3 of specific issues is feasible  
4 and desired.

5 (5) **Miscellaneous.**

6 Any other subjects relevant to the trial of the action,  
7 or material to its just, speedy and inexpensive determination.  
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**ATTACHMENT 2**

**USDC**  
Case No. CV05-05178 BZ  
**JOINT** Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_  
Signature \_\_\_\_\_

**USDC**  
Case No. CV05-05178 BZ  
**JOINT** Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_  
Signature \_\_\_\_\_

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Case No. CV05-05178 BZ  
**JOINT** Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_  
Signature \_\_\_\_\_

**USDC**  
Case No. CV05-05178 BZ  
**JOINT** Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_  
Signature \_\_\_\_\_

**USDC**  
Case No. CV05-05178 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_  
Signature \_\_\_\_\_

**USDC**  
Case No. CV05-05178 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_  
Signature \_\_\_\_\_

**USDC**  
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**PLNTF** Exhibit No. \_\_\_\_\_  
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**PLNTF** Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_  
Signature \_\_\_\_\_

**USDC**  
Case No. CV05-05178 BZ  
**DEFT** Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_  
Signature \_\_\_\_\_

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